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Brooks Fiber
Ameritech
Michigan

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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JUN 10 1997

*Federal Communications Commission
Office of Secretary*

In the matter of

Application of Ameritech
Michigan Pursuant to Section
271 of the Telecommunications
Act of 1996 to Provide In-Region,
InterLATA Services in Michigan

CC Docket No. 97-137

**OPPOSITION OF BROOKS FIBER COMMUNICATIONS OF
MICHIGAN TO AMERITECH'S APPLICATION**

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SUMMARY

Ameritech's renewed request for in-region, interLATA authority in Michigan finds local competition in Michigan in a nascent and vulnerable stage. Competition in Michigan exists primarily in the form of resale and other non facilities - based service. The providers of these competitive services have encountered obstruction and delay in their efforts to secure interconnection from Ameritech, and still lack access to minimally adequate operations support systems through which the elements of the Act's competitive checklist might be obtained with reasonable accuracy and efficiency.

Under these circumstances, the Commission must preserve Ameritech's only meaningful incentive to meet its obligations under the 1996 Act and the implementing orders of this Commission. Ameritech has not yet met those obligations, and if it is permitted to enter the in-region, interexchange market at this time, it assuredly will not meet those obligations in the future. The result of granting Ameritech's Application would be an indefinite delay in the fulfillment, for Michigan consumers, of the Congress' goal of robust local competition. Accordingly, Ameritech's application must be denied.

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**OPPOSITION OF BROOKS FIBER COMMUNICATIONS OF
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Once again, Ameritech Michigan ("Ameritech") has applied to this Commission for authority, under §271 of the Telecommunications Act of 1996, to provide in-region, interLATA telecommunications service in Michigan.¹ Once again, Ameritech has failed entirely to demonstrate its compliance with the requirements of sections 271 and 272 of the Act. Granting the present application would threaten the goal of robust local competition that the Congress has charged this Commission to achieve, and would gravely disserve the public interest. Brooks Fiber Communications of Michigan, Inc. ("Brooks Fiber") strongly urges that Ameritech's application be denied.²

¹ Ameritech's previous application was withdrawn after the Commission granted a motion to strike portions of the application brought by the Association for Local Telecommunications Services. *Application by Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-1, Order, (Feb. 7, 1997).

² Brooks is a competitive local exchange carrier ("CLEC") doing business in the Grand Rapids and Lansing, Michigan LATAs; and one of only four CLECs operating in Michigan. Brooks is the only CLEC providing both business and residential services in Michigan.

I. The Legal Standard for Authorization of BOC In-region, InterLATA Service.

A Bell operating company ("BOC") may provide in-region, interLATA services only if this Commission finds that the BOC has satisfied four requirements. First, the BOC must show that it has entered into binding, approved agreements specifying the terms and conditions under which the BOC is providing access and interconnection to its network facilities for the network facilities of one or more competing, facilities-based providers of residential and business service.³ Second, the BOC must demonstrate that it provides or offers fourteen access and interconnection items that the Congress finds to be essential to viable local competition.⁴ Third, the BOC must comply with the requirements of §272 of the Act, including the establishment of a separate subsidiary to provide in-region, interLATA services.⁵ Finally, the BOC must demonstrate that granting of its application will serve the public interest, convenience and necessity.⁶

The first requirement is satisfied only by an approved interconnection agreement that includes all essential terms. It is not satisfied by an interconnection agreement that "does not set forth complete rates and terms for a checklist item, but merely invites further negotiation at some later time . . .".⁷ Neither is the requirement satisfied by interconnection agreements with

³ 47 U.S.C. § 271(c)(1)(A).

⁴ *Id.* § 271(c)(2)(B).

⁵ *Id.* § 271(d)(3)(B).

⁶ *Id.* § 271(d)(3)(C).

⁷ *Application of SBC Communications, Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of*

competitors that do not offer service “exclusively . . . or predominantly over their own telephone exchange service facilities. . . ,”⁸ or with competitors that do not serve both business and residential customers.⁹

The second requirement is equally exacting. In order to satisfy the “competitive checklist,” a BOC must make all checklist items practically available to competitors on terms that are “just, reasonable, and nondiscriminatory,”¹⁰ and that “provide an efficient competitor with a meaningful opportunity to compete.”¹¹ The competitive checklist demands parity between a BOC’s access to network elements and the access provided to CLECs.¹² Most importantly, compliance with the checklist cannot be shown by a mere paper demonstration that the BOC is offering all of the checklist items. The BOC must have implemented automated Operations Support Systems (“OSS systems”) on a scale sufficient to meet all of the demands of a fully competitive environment, and must (where local competitors have entered the market)

Oklahoma, CC Docket No. 97-121, Evaluation of the United States Department of Justice at 23 (“DOJ Evaluation”).

⁸ 47 U.S.C. § 271(c)(1)(A).

⁹ *Id.*

¹⁰ *Id.* § 251(c)(2)(D)

¹¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 14171 ¶315 (“*Local Competition Order*”).

¹² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Second Order on Reconsideration*, CC Docket Nos. 96-98 and 96-185 (“*Second Recon. Order*”) at ¶ 9; *Local Competition Order* ¶ 315 (rel. Apr. 19, 1996); DOJ Evaluation n. 38 at 27-28.

demonstrate the effectiveness of the BOC's OSS systems against objective standards of performance applied in an operational environment.¹³

The separate affiliate requirements also are well-defined. Before a BOC application under §271 may be granted, the BOC must have established a separate affiliate for the provision of interLATA service, and must demonstrate its compliance with all of the safeguards set out in §272 as defined in the implementing orders of the Commission.

Finally, the requirement of a public interest standard imposes an especially grave responsibility on this Commission. By adding a general, public-interest criterion to the more specific requirements of §271, the Congress has charged the Commission to look beyond an applicant's apparent compliance with the enumerated requirements, and assure itself that the BOC cannot use its continuing control of the local exchange bottleneck to strangle local competition in its cradle. In order to satisfy this public-interest requirement, the BOC must face facilities-based competitors that do not depend for their survival on the availability of BOC facilities. The BOC also must demonstrate that where competitors depend on BOC facilities, any deficiency in the competitors' service to end users, as compared to that of the BOC, will not be the result of the BOC's failure to provide checklist items promptly and at a level of quality comparable to the network elements that the BOC provides to itself¹⁴. Finally, the BOC must convince the Commission, not only that adequate OSS systems exist, but that objective standards are in place by which the BOC's failure to provide nondiscriminatory access can be measured

¹³ DOJ Evaluation at 29-30.

¹⁴ *Id.* at 41.

and corrected. If this public-interest standard is not met at the time an application is filed, then the Commission must delay the BOC's entry into the interLATA market until it is met. The only risk posed by denying an application is that a BOC will not immediately enter the interexchange market -- a market in which considerable competition already exists. The risk posed by premature grant of an application, however, is the far more serious prospect that nascent competition in a monopoly market will be rendered ineffective or destroyed.

As the following shows, Ameritech's application does not satisfy the legal standard of §271. Ameritech does not face competition from an exclusively or predominantly facilities-based local carrier in any part of Michigan, has not complied with the competitive checklist requirements of §271(c)(2)(B)¹⁵, and has not shown that granting its application would serve the public interest. Accordingly, Ameritech's application should be denied.

II. Ameritech Does Not Provide Interconnection through Binding Agreements with Predominantly Facilities-Based Competitors.

As stated above, Section 271(c)(1)(A) imposes three requirements. First, the BOC applying to enter the interLATA market must face facilities-based competition from one or more carriers that serve both business and residential customers. Second, there must be a binding interconnection agreement between the BOC and one or more such carriers. Third, the BOC

¹⁵ The Consultation of the Michigan Public Service Commission, filed with this Commission on this date, confirms that Ameritech has not complied with all items of the competitive checklist.

must be providing interconnection pursuant to such an interconnection agreement.¹⁶ Ameritech has satisfied none of these three requirements in Michigan.

A. No Predominantly Facilities-Based CLECs Operate in Michigan.

Of the requirements of § 271, the facilities-based competition requirement is especially fundamental. This provision recognizes that services and facilities provided to CLECs by the BOCs are part of the local exchange bottleneck, and that the cost, availability and quality of competitive services based on those services and facilities are subject to BOC control.¹⁷ Only services provided through facilities not subject to the BOC's control, therefore, represent genuine competitive alternatives to the BOC's monopoly services.

Competition of the kind required by §271 is entirely unavailable in Michigan. Of the four CLECs operating in Michigan, only Brooks Fiber serves both residential and business subscribers,¹⁸ and no carrier provides service predominantly over its own facilities. As of

¹⁶ The 1996 Act also permits a BOC to file a statement of generally available terms ("SGAT") where no CLEC has requested interconnection. 47 U.S.C. §271(c)(1)(B). This so-called Track B alternative is not available when a CLEC has requested interconnection, and in fact the Michigan Public Service Commission recently rejected Ameritech's filing of an SGAT in Michigan. *In the Matter, On the Commission's own Motion to Consider Ameritech Michigan's Compliance with the Competitive Checklist in § 271 of the Telecommunications Act of 1996*, Case No. U-11104.

¹⁷ The Commission has recognized the importance of facilities-based competition as a predicate for relaxing regulation of carriers with market power. The Commission's decision to classify AT&T as nondominant, for example, was based largely on the fact "AT&T face[d] at least two full-fledged facilities-based competitors." *Motion of AT&T Corp. to be reclassified as a Non-Dominant Carrier*, 1995 FCC LEXIS 6877 at ¶¶ 69-70 (rel. Oct. 23, 1995).

¹⁸ Brooks Fiber serves residential customers in Grand Rapids and Holland, Michigan. The other CLECs in Michigan do not serve residential customers in any area. Brief in Support of Application by Ameritech Michigan for Provision of In-Region, InterLATA Services in Michigan, May 21, 1997, ("Ameritech Application" or "Application") n. 39. Section 271

June 6, 1997, Brooks Fiber has 21,786 lines in service in Grand Rapids, of which 15,876 are business and 5,910 are residential. Brooks Fiber relies on Ameritech to provide it with facilities for sixty-one percent (61%) of its business customers and ninety percent (90%) of its residential customers. On these facts, Brooks Fiber clearly is not providing telephone exchange service predominantly over its own telephone exchange service facilities for either business or residential customers.

Ameritech does not even acknowledge, much less deny, these facts. Instead, it argues that unbundled BOC network elements leased from Ameritech count as CLEC facilities for purposes of determining whether a competitor is exclusively or predominantly facilities-based. On the basis of this argument, Ameritech claims that CLECs operating in Michigan are predominantly facilities-based even though they rely overwhelmingly on BOC-controlled facilities to reach their customers.

Ameritech's claim is based on two arguments. First, Ameritech urges that §271(c)(1)(A) of the Act classifies all CLEC service that is not a resold service of another carrier as "facilities-based."¹⁹ Second, Ameritech invites the Commission to rely on its *Universal Service Order* (Federal and State Joint Board on Universal Service, CC Docket No. 96-45, FCC 97-157, Report and Order (May 8, 1997) ("*Universal Service Order*")) as establishing an equivalence between

requires the presence of competition in both business and residential markets. 47 U.S.C. § 271(c)(1)(A).

¹⁹ Ameritech Application at 9-14.

facilities-based service and service provided through unbundled BOC network elements.²⁰

Neither argument has merit.

The first argument is based on an entirely arbitrary reading of § 271(c)(1)(A). While this section distinguishes facilities-based competition from competition based on resale, it does not define service through unbundled BOC network elements as belonging to either category. Similarly, the legislative history cited by Ameritech simply fails to address the question whether service provided through BOC network elements may qualify as “facilities-based service.” In the absence of precise guidance in the statutory language, this Commission must treat competition through unbundled network elements according to the stated procompetitive purpose of the Act, rather than through an arbitrary reading that directly contradicts the statute’s purpose.

Ameritech’s reliance on the Commission’s *Universal Service Order* is similarly misplaced. The Commission’s mandate in the *Universal Service Order* was not to identify those kinds of CLEC service that will pose an effective competitive counterweight to the BOCs’ local exchange monopoly; instead, the task in that proceeding was to determine when, under § 214(e)(1)(A) of the 1996 Act, a local carrier has incurred expense and offered service to an area for purposes of eligibility to receive universal service support payments. For this purpose, the Congress has determined that any method of providing service -- *including resale of another carrier’s services* -- would qualify. Accordingly, there is no legitimate comparison between § 271(c)(1)(A) and § 214(e)(1)(A).

²⁰ *Id.* at 14.

Beyond its lack of support in the statutory language, Ameritech's interpretation is entirely at odds with the purpose of the Act. A BOC's unbundled network elements, no less than BOC services provided to resellers, are part of the BOC's local exchange bottleneck. The fact that a CLEC may acquire an unbundled BOC access line or switch port does not change the fact that the price, availability and quality of that facility are entirely within the BOC's control. Therefore, for the purpose of determining whether facilities-based competition exists, there is no practical distinction between resold BOC service and unbundled BOC facilities. Under Ameritech's interpretation, a CLEC would be considered predominantly facilities-based even if not did not own *any* facilities. Acceptance of Ameritech's interpretation of the Act would render the facilities-based competition requirement meaningless.

In order to achieve the procompetitive purpose of the Act, this Commission should find that no CLEC is providing service "predominantly over its own facilities" unless more than half of its access lines are owned and controlled by the CLEC, and are not merely leased from another carrier. When unbundled network elements owned and controlled by Ameritech are disregarded, the facts demonstrate that Brooks Fiber does not offer service "exclusively" or "predominantly" over its own facilities. In fact, of the access lines used by customers to reach Brooks Fiber's facilities, only thirty-one percent (31%) are provided by Brooks Fiber. The rest are provided entirely by Ameritech. On these facts, Ameritech clearly does not face facilities-based competition in Michigan.

B. Ameritech Has Not Reached Binding Interconnection Agreements With Facilities-Based Carriers Serving Both Business and Residential Customers.

All of the interconnection agreements entered into by Ameritech, including the Brooks Fiber interconnection agreement, contain interim provisions because many rates, terms and conditions have not been properly established. Although the Michigan Public Service Commission (hereinafter the "MPSC") has opened dockets to finalize many interim rates, terms and conditions,²¹ Ameritech cannot be found to have entered into "binding" agreements until those rates, terms and conditions have been permanently established.

Ameritech admits that most, if not all, of its interconnection agreements in Michigan, including Brooks Fiber's, do not address all of the elements necessary to provide access or interconnection pursuant to the Act.²² All of these agreements leave important issues to be determined at a later date or to be settled by separate agreements. Ameritech attempts to dismiss these deficiencies by claiming that "most favored nation" provisions will ensure incorporation of missing elements in these agreements. Until this is actually done, however, the interconnection agreements remain incomplete and insufficient to constitute a "binding" agreement pursuant to the Act. Therefore, to the extent that Ameritech bases its application on the presence of Brooks Fiber as a supposed competing, facilities-based local carrier serving both business and residential

²¹ See, e.g., MPSC Case No. U-11280 to consider the total service long run incremental costs and to determine the prices of unbundled network elements, interconnection services, resold services, and basic local exchange services for Ameritech Michigan.

²² See attachments to the affidavit of Theodore A. Edwards on behalf of Ameritech Michigan.

customers, that reliance is misplaced because Brooks Fiber's interconnection agreement does not satisfy all of the requirements of the Act.²³

C. Ameritech Is Not Providing Access Or Interconnection To Its Network Facilities.

One of the more startling features of Ameritech's Application is its claim that a BOC is "providing" a checklist item even when it does not actually "furnish" the item to a competitor.²⁴ On this view of the Act, a BOC's mere paper assertion that it is willing to provide a checklist item is sufficient to comply with the Act.

As the Department of Justice ("DOJ") has pointed out, the requirement that a BOC provide access or interconnection calls for much more than a paper commitment to do so. In order to satisfy the Act, a BOC ordinarily must be "providing each element to at least one facilities-based competitor."²⁵ If no competitor is "actually using" a checklist item, then the BOC still must demonstrate more than a theoretical willingness to provide the item upon request: the BOC must show that "the item is available both as a legal *and practical matter*."²⁶ Specifically, if ". . . a BOC has approved agreements that set forth complete prices and other terms and conditions for a checklist item, and if it demonstrates that it is willing and able

²³ Although Ameritech claims that two interconnection agreements in Michigan (AT&T and Sprint) address all of the elements necessary to provide interconnection pursuant to the Act. (*see* Edwards affidavit, *supra*), neither AT&T nor Sprint is providing service exclusively or predominantly over its own facilities in Michigan.

²⁴ Ameritech Application at 22.

²⁵ DOJ Evaluation at 22.

²⁶ *Id.* at 23 (*emphasis added*).

promptly to satisfy requests for such quantities of the item as may reasonably be demanded by providers, at acceptable levels of quality, it still can satisfy the checklist requirement with respect to an item for which there is no present demand.”²⁷ As the DOJ has pointed out, a proper showing that a BOC is providing the items on the competitive checklist requires a detailed demonstration of the practical availability of each such item.

Ameritech has not -- and on the present state of its access and interconnection arrangements, cannot -- make that required showing. In fact, as the following discussion shows, many checklist items that Brooks Fiber has requested have not been provided at all, or have been provided at such a low level of quality and accuracy as to be effectively unavailable.

III. Ameritech Has Not Complied With The Competitive Checklist Of Section 271(c)(2)(B).

Ameritech has utterly failed to satisfy the conditions of the competitive checklist set forth in § 271(c)(2)(B) of the Act, and its serious, continuing anti-competitive conduct and operational deficiencies have had a significant adverse impact on competition for local exchange service in Michigan. Most fundamentally, Ameritech has failed to provide the foundation on which adequate provisioning and maintenance of access and interconnection depend -- a functioning OSS system with adequate capacity and a track record of reliable operation, as measured by stable, precise and adequate performance standards. Ameritech has not offered such a system,

²⁷ *Id.*

and indeed has not implemented an automated OSS system of any kind in Michigan. This deficiency, alone, requires rejection of Ameritech's § 271 request.

In addition to its failure to provide access to adequate OSS systems, Ameritech has refused or failed to provide several other competitive checklist items, and has engaged in a wide variety of anticompetitive conduct with the purpose and effect of inhibiting Brooks Fiber's ability to compete. These deficiencies in Ameritech's compliance with its interconnection obligations are detailed below.

A. Failure to Provide Reliable Operations Support Systems ("OSS").

No element of the competitive checklist is more important than the CLECs' access to OSS systems that automate the timely, accurate and efficient accommodation of end user customer needs, including preordering, ordering, provisioning, repair, maintenance and billing of unbundled network elements. In order to demonstrate compliance with its OSS obligations, Ameritech must provide detailed data, based upon comprehensive and verifiable performance measures, showing that it has achieved parity between the access and interconnection items it provides to itself, and those comparable items that it is required to provide to CLECs.²⁸ More generally, it must be shown that Ameritech's OSS system, in practice and according to measurable performance criteria, gives CLECs a "meaningful opportunity to compete."²⁹

²⁸ *Local Competition Order* at ¶ 315; *Second Recon. Order* at ¶ 9.

²⁹ *Local Competition Order* at ¶ 315.

Ameritech has made two, inconsistent claims concerning its performance in providing OSS to Brooks Fiber. First, Ameritech has claimed that Brooks Fiber has not actively sought interconnection with Ameritech's OSS, and in fact has made a business decision not to use OSS in connection with the acquisition and use of unbundled network elements.³⁰ Second, Ameritech claims that Brooks Fiber is actively and successfully using Ameritech's OSS system for ordering, provisioning and billing of unbundled network elements.³¹ Neither of these claims is accurate. In fact, Brooks Fiber consistently has requested implementation of an adequate OSS system in Michigan. Ameritech has failed to respond to those requests, and hindered access to OSS by delaying interconnection and refusing to provide the technical data, training or compatibility specifications necessary to implement OSS. As a result, no adequate OSS system exists in Michigan today.

1. Ameritech Has Actively Delayed Brooks Fiber's Access to Ameritech's OSS.

In addition to its claim that Brooks Fiber is actively and successfully using Ameritech's OSS for ordering, provisioning and billing, Ameritech also claims that Brooks Fiber has "chosen" not to access Ameritech's OSS. In fact, as Mary Bogue of Brooks Fiber has testified,³² Brooks Fiber has repeatedly requested access to Ameritech's OSS for directory assistance, 911 service and other unbundled elements -- all without success.

³⁰ See e.g., Ameritech's Submission of Additional Information dated June 2, 1997, in MPSC Case No. U-11104, pp.10-11.

³¹ See affidavit of Joseph A. Rogers on behalf of Ameritech Michigan at pp. 4 and 43 .

³² The MPSC held a hearing on May 28, 1997, regarding Ameritech's OSS ("MPSC OSS hearing"). See, MPSC OSS hearing transcript pp. 167-180.

Directory Assistance. Brooks Fiber initially requested an electronic interface for directory assistance almost two years ago. Ameritech delayed implementation of an electronic interface for directory assistance until very recently. Although the interface now has been installed, it does not yet work properly. Because of these difficulties, Brooks Fiber cannot estimate when the directory assistance interface will be fully operational.

911. Brooks Fiber initially requested to update its existing 911 feed to Ameritech to a Connect Direct 911 connection in November, 1996. Although Ameritech agreed to update the 911 feed, it also delayed implementation until very recently. This electronic interface still does not work properly, and Brooks Fiber has received no estimated date by which the interface will be fully operational.

Unbundled Elements. Although Ameritech has claimed that it made information regarding its OSS "available" to Brooks Fiber, either by oversight or intent, Ameritech failed to notify Brooks Fiber of the existence of its OSS until the filing of its first §271 application on January 2, 1997. Once Brooks Fiber became aware of the existence of OSS, it initiated a series of meetings with Ameritech to start the connectivity process, and filled out and submitted the ECN connection request form required by Ameritech to gain access to its OSS in early February.³³ Although Brooks Fiber was told that its request to gain access to Ameritech's OSS would take 4 to 6 weeks to process, the connection was not installed until late May. Now that the connection has been installed, it must be tested and the interfaces necessary to access

³³ A copy of the ECN Connection Request Form is attached hereto as Exhibit A .

Ameritech's OSS must be put in place. Although Brooks Fiber developed an interface to access Ameritech's OSS, that interface has not yet been tested. Based upon Brooks Fiber's prior experience in implementing complex electronic interfaces with Ameritech and other vendors, additional time will be needed to install, test and modify the interface. Brooks Fiber anticipates that this process will require an additional eight months.

2. Ameritech Has Not Provided Necessary Technical Data to Implement OSS.

The entire process of developing access to Ameritech's OSS has been hampered by Ameritech's failure to provide Brooks Fiber with the information necessary to access Ameritech's OSS. Although Ameritech claims to have developed a series of binders to assist CLECs in gaining access to its OSS, with the exception of a single binder of information regarding ECN connections, Ameritech has failed to provide any such information to Brooks Fiber. Despite the fact that Brooks Fiber personnel work with Ameritech almost daily, not one person at Ameritech had ever informed Brooks Fiber of the existence of any of the "voluminous information" regarding the use of Ameritech's OSS it now claims is available until shortly after it refiled its application with the Commission on May 29, 1997. Furthermore, although Brooks Fiber has made multiple requests, including record requests,³⁴ for Ameritech to provide Brooks Fiber with this information, Ameritech has still refused to provide any of this information to Brooks Fiber. Given Ameritech's repeated failures to inform or provide Brooks Fiber with information regarding its OSS, it appears as if Ameritech is intentionally withholding

³⁴ MPSC OSS hearing transcript pp. 262-263.

information regarding the use of its OSS to further delay competition for local exchange service in Michigan.

B. Ameritech Has Failed to Provide OSS for Unbundled Loops Act in Michigan.

Ameritech contends that it has provided an adequate OSS system to Brooks Fiber, and that Brooks Fiber is successfully using that system for ordering, provisioning and billing. In fact, the “system” presently offered to Brooks Fiber is not an OSS system at all, but a chaotic, largely manual set of procedures that are entirely inadequate to serve the legitimate needs of Brooks Fiber’s customers. Not surprisingly, as a result of Ameritech’s failure to implement OSS, Ameritech’s actual performance in ordering, provisioning and related functions is wholly inadequate, and bears no resemblance to the supposed level of performance presented in Ameritech’s Application.

a. Ameritech’s Process is Predominantly Manual, Cumbersome and Inaccurate

The Commission and the DOJ have made it clear that in order to “satisfy the checklist wholesale support processes *must be automated* if the volume of transactions would, in the absence of such automation, cause considerable inefficiencies and significantly impede competitive entry.”³⁵ Although Ameritech claims that Brooks Fiber currently uses Ameritech’s OSS for ordering, provisioning and billing, the record plainly shows that no automated, Ameritech OSS system for unbundled loops exists in Michigan, and that the present system is inadequate and significantly impedes competition.

³⁵ DOJ Evaluation at 28 (emphasis added).

The specifics of the present Ameritech system for ordering, provisioning and related activities for unbundled loops are part of the record in the MPSC OSS hearing. As Katherine Estepp of Brooks Fiber has testified,³⁶ the present system is an error-prone, patchwork process based on batch transfers of data through modems, facsimile machines and express mail delivery. The mechanized portions of the process not only are inadequate and inefficient in themselves, but are punctuated by frequent manual interventions that slow the process and increase the likelihood of error. All of these problems are compounded by the fact Ameritech uses a *non-industry standard* ASR ("access service request") format for unbundled loop orders.³⁷ The ASR was developed for use by interexchange carriers in requesting exchange access, and makes no provision for ordering of number portability or other features required by facilities-based CLECs. As a result, the vast majority of unbundled loop orders must be accompanied by a separately faxed order for number portability. This extra step would be unnecessary if Ameritech adopted the industry standard LSR ("local service request") format. Although Brooks Fiber has repeatedly requested that Ameritech adopt the industry standard LSR format for unbundled local loop orders, Ameritech has refused to do so.³⁸

³⁶ MPSC OSS hearing transcript pp.163-167.

³⁷ The fact that Ameritech's OSS for unbundled elements do not comply with industry standards is pointed out in a letter dated April 3, 1997, from Beth Welch, Senior Consultant at Bellcore, to James Styf at Ameritech and included in the attachments to the affidavit of Joseph A. Rogers on behalf of Ameritech Michigan.

³⁸ Recognizing that the BOCs have failed to develop and implement industry performance standards for OSS systems, LCI & CompTel filed a Petition For Expedited Rulemaking regarding performance standards for OSS with the Commission on May 30, 1997.

The current unbundled loop order process, which Ameritech characterizes as fully adequate under the competitive checklist, consists of three district phases: ordering, ASR confirmation and Firm Order Commitment ("FOC") confirmation. The first of these phases, alone, consists of the following nine separate steps:

1. Brooks Fiber enters order information (including a request for number portability) into its service order system.
2. Brooks Fiber enters the same order information (except for the number portability request) into the file transfer system, using the same ASR format that interexchange carriers use to request access.
3. ASRs are collected in files for transfer to Ameritech in "batches".
4. Batches are sent to Ameritech by modem.
5. Number portability orders are prepared manually and faxed to Ameritech.
6. Ameritech retrieves the batches sent by Brooks Fiber and generates FOCs for the ASRs.
7. Brooks Fiber retrieves the FOCs by modem.
8. Ameritech faxes confirmation of number portability orders.
9. Brooks Fiber enters FOCs and number portability confirmations into its service order system.

This cumbersome process is inherently unreliable. For example, during the month of May, 1997, Ameritech's system lost up to 10.26% of Brooks Fiber's ASRs and up to 71.43% of Brooks Fiber's FOCs per day, and provided only one FOC on time.³⁹ Some FOCs were provided

³⁹ Under the Interconnection Agreement, Ameritech is required to provide FOCs within 48 hours.

as much as 20 days after Brooks Fiber's order was submitted. Copies of Ameritech ASR and FOC performance reports are attached hereto as Exhibit B.

Because Ameritech's ordering system is so unreliable, it is necessary for Brooks Fiber to confirm each ASR and FOC manually. The ASR confirmation process consists of four separate steps:

1. Brooks Fiber keeps a manual log of all ASRs sent to Ameritech by modem.
2. The ASR list is faxed to Ameritech.
3. Ameritech compares the ASR list with ASRs actually received.
4. Brooks Fiber resubmits all ASRs not received.

The FOC confirmation process likewise consists of four separate steps:

1. Ameritech keeps a manual log of all FOCs for ASRs.
2. The FOC list is faxed to Brooks Fiber.
3. Brooks Fiber compares the FOC list with FOCs actually received.
4. Ameritech faxes, or sends by overnight mail, the FOCs not previously received.

Ameritech's present "system" for billing consists of mailing Brooks Fiber a tape containing billing information. Although this is a vast improvement over Ameritech's previous billing system which, until a few months ago, consisted of foot-high stacks of paper, it is not an OSS system. The present system is not automated and therefore causes substantial delays not

otherwise incurred by Ameritech with regard to its own customers. Consequently, Ameritech's billing system does not comply with the requirements set forth in the Act.⁴⁰

A proper, automated OSS system would bear no resemblance to this slow, complex and error-prone process. A fully automated OSS would require fewer steps for the first phase of the process just described, and because of automation would be sufficiently accurate to eliminate the second and third phases. Unfortunately, an automated process of the kind required to meet the legitimate needs of competitors is nowhere in sight in Michigan.

b. Ameritech's OSS Cannot Meet Expected Demand

Brooks Fiber has serious reservations concerning the ability of Ameritech's OSS to handle the volume of orders that reasonably can be expected to arise in a competitive environment.⁴¹ At the MPSC's OSS hearing, Warren Mickens, Vice President for Customer Operations at Ameritech, complained that "wild volume swings" for resale orders have "affected our performance for the orders that are processed manually."⁴² Given the relative ease of processing orders for resale, compared to the dramatically more complex task of processing orders for unbundled loops, and given the fact that local exchange competition in Michigan has

⁴⁰ DOJ Evaluation at 28.

⁴¹ DOJ has pointed out that an OSS system must allow competitors to serve customers throughout a state in "quantities that competitors collectively would ultimately demand in a competitive market where the level of competition was not constrained by any limitations of the BOC's interfaces or processes." Ameritech has not demonstrated that it can meet this standard, and if performance supports the opposite conclusion. DOJ Evaluation at 29.

⁴² MPSC OSS hearing transcript p. 72.